

**BEFORE THE THREE PERSON DUE PROCESS HEARING PANEL  
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION  
PURSUANT TO SECTION 162.961 RSMo.**

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	)
<b>Petitioner,</b>	)
	)
<b>v.</b>	)
	)
<b>SPECIAL SCHOOL DISTRICT</b>	)
<b>OF ST. LOUIS COUNTY,</b>	)
	)
<b>Respondent.</b>	)

**COVER SHEET**

**1. Parties**

Dr. Peter T. Kachris  
Superintendent of Schools  
Special School District of St. Louis County  
12110 Clayton Road  
Town and Country, MO 63131

**2. Attorneys**

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**Date of Due Process Hearing Request:** June 3, 2003

**Dates of Due Process Hearing:** September 6, 7, and 25, 2003

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	)
<b>Respondent.</b>	)

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION**

The Hearing Panel, after hearing and giving appropriate weight to the evidence in this matter, makes the following Findings of Fact and Conclusions of Law and issues the following Decision:

**I. Issues and Purpose of the Hearing**

Petitioner raised the following issues which were addressed at the hearing:

1. Whether the Individualized Education Program (IEP) prepared by the IEP team on May 16, 2003, was reasonably calculated to provide Student with a free, appropriate, public education (FAPE), in that the IEP did not place Student in a full-time residential treatment facility in Illinois as requested by the Parents; and
2. If the May 16, 2003, IEP was not reasonably calculated to provide Student with FAPE, does Student's disability mandate her placement in a residential treatment facility in Illinois.

**II. Procedural History**

On June 3, 2003, Parents requested a due process hearing from the Missouri Department of Elementary and Secondary Education (DESE). *Hearing Panel Exhibit 1.*

The request for the due process hearing was received by DESE on June 3, 2003. *Hearing Panel Exhibit 2.*

On June 3, 2003, Pam Williams, Director for Special Education Compliance at DESE, notified the parents that the request for due process had been received. *Id.*

On June 12, 2003, Ms. Williams notified the Chairperson of assignment to serve on the due process hearing panel to hear the parents' claims. *Hearing Panel Exhibit 3.*

On June 13, 2003, the Chairperson informed the parties, via letter, that a hearing must be held and a written decision rendered on or before July 18, 2003. The Chairperson requested, in that letter, that the parties inform the Panel by June 20, 2003: how long they would need to present their respective cases; any special accommodations that were needed; any dates the parties were not available for a hearing between June 23, 2003, and July 10, 2003; and whether the parties desired to hold a pre-hearing conference to discuss problems or hear motions regarding the issues in the case. *Hearing Panel Exhibit 4.*

On June 24, 2003, the Chairperson issued an Order Setting Hearing wherein the Chairperson ordered that the due process hearing would begin at 9:00 a.m. on July 8, 2003, upon the parties having failed to respond to the Chairperson's June 13, 2003, letter. *Hearing Panel Exhibit 5.*

On June 26, 2003, Robert Thomeczek entered his appearance on behalf of the Respondent, Special School District of St. Louis County (SSD), and requested an extension of time in order to pursue discovery. *Hearing Panel Exhibit 6.*

On June 27, 2003, Lawrence Altman entered his appearance on behalf of the parents and also requested a delay in the hearing. *Hearing Panel Exhibit 7.*

On June 30, 2003, the Chairperson issued an Order Setting Hearing wherein the request by SSD that the hearing be continued was granted and the hearing was set for August 18 through 19, 2003, with a final date of decision being September 22, 2003. *Hearing Panel Exhibit 8.*

On July 1, 2003, the Chairperson issued a subpoena duces tecum on behalf of SSD. *Hearing Panel Exhibit 9.*

On July 9, 2003, attorney for the parents entered his objection to the subpoena of SSD in a letter. *Hearing Panel Exhibit 10.*

On August 6, 2003, the parties entered a Joint Request for an Extension of the Timelines due to conflicts in their schedules. *Hearing Panel Exhibit 11.*

The Chairperson granted the parties' Motion in an Order on August 8, 2003, and set the date for the due process hearing for September 10 through 12, 2003, with the date of decision of October 13, 2003. *Hearing Panel Exhibit 12.*

SSD submitted a Motion to Dismiss or In the Alternative for Summary Judgment and a Memorandum in Support to the Chairperson on August 20, 2003. *Hearing Panel Exhibit 13.*

On August 27, 2003, Petitioners entered their Response to Respondent's Motion to Dismiss or In the Alternative for Summary Judgment. *Hearing Panel Exhibit 14.*

On September 2, 2003, the Chairperson issued a Decision and Order denying the Motion to Dismiss or In the Alternative for Summary Judgment by the Respondent. *Hearing Panel Exhibit 15.*

On September 8, 2003, the Chairperson issued a subpoena on behalf of SSD. *Hearing Panel Exhibit 16.*

On September 9, 2003, the Chairperson issued a Notice of Hearing wherein the hearing would begin on September 10, 2003, and continue through September 12, 2003, and be held at the

Special School District of St. Louis County Central Office. *Hearing Panel Exhibit 17*.

The due process hearing convened at 9:00 a.m. on September 10, 2003.

During the course of the hearing on September 10, 2003, the Panel expressed concern over the issue of whether it had jurisdiction over the case at hand. Upon the agreement of all parties, the Panel ordered that the hearing would reconvene the following morning in order to conclude the Petitioners' presentation of evidence, at which time the hearing would be postponed in order that the parties could brief the Panel regarding its jurisdiction. (09-10-03: Tr., p. 135-140; 09-11-03: Tr., p. 55-56).

On September 16, 2003, Petitioner submitted a Memorandum in Support of the Panel's Jurisdiction (*Hearing Panel Exhibit 18*) and Respondent submitted a Motion to Dismiss for Lack of Jurisdiction and a Memorandum in Support. *Hearing Panel Exhibit 19*.

On September 19, 2003, the Chairperson issued an Order and Memorandum denying the Respondent's Motion to Dismiss and ordering that the due process hearing would reconvene pursuant to agreement between the parties on September 25, 2003. *Hearing Panel Exhibit 20*.

The due process hearing reconvened on September 25, 2003, wherein Respondent presented its evidence. (9-25-03: Tr., p. 1).

At the conclusion of the due process hearing the parties made a joint Motion that they have until October 17, 2003, to submit Proposed Findings of Fact and Conclusions of Law and Briefs in Support and that a final decision in this case be rendered by October 31, 2003. (9-25-03: Tr., p. 276-277, line 24-19).

On October 17, 2003, Petitioner filed Proposed Findings of Fact and Conclusions of Law (*Hearing Panel Exhibit 21*) and Respondent filed Proposed Findings of Fact, Conclusions of Law and Decision. *Hearing Panel Exhibit 22*.

### **III. Jurisdictional Motions**

On August 20, 2003, Respondent filed a Motion to Dismiss or In the Alternative for Summary Judgment and Memorandum in Support wherein it asserted that because the parents did not reside within St. Louis County, Missouri, it was not responsible for the provision of FAPE regarding the student. In the alternative, SSD requested that the Hearing Panel join Winfield School District and the Department of Elementary and Secondary Education as necessary and indispensable parties to the action.

The crux of SSD's motion was that because the student's "residency" is deemed by Missouri law to be in the same location as the parents, Student was not a resident within St. Louis County and therefore not entitled to the provision of FAPE by SSD.

In response, the parents asserted that SSD was the only district providing special education services to the student and that it was those services which were challenged in the due process hearing request.

Respondent's Motion to Dismiss was denied by the Chairperson in a Decision and Order.

Specifically, the Chairperson found that SSD was the sole party responsible for the provision of the special education services in dispute and that while SSD may have an avenue of recompense from other entities under Missouri law, such a determination is beyond the scope of the due process hearing panel's authority to decide.

During the hearing the issue of jurisdiction arose again with the Panel expressing its concerns regarding the issue. With the parties in agreement, the due process hearing was postponed and the parties were requested to submit briefs on the issue of jurisdiction in light of the following regulations: State Plan, Section 8; State Plan, Section 4; 34 C.F.R. § 300.400; 34 C.F.R. § 300.454; 34 C.F.R. § 300.457; 34 C.F.R. § 300.450; and 34 C.F.R. § 300.401.

As expressed by the Panel, the specific issue of concern was where a parent unilaterally places a student in a facility served by a secondary school district, is that secondary school district subsequently liable for a denial of FAPE within the due process hearing framework?

As agreed to, both parties submitted briefs on the issue to the Panel on September 17, 2003.

Petitioners asserted that the Panel had jurisdiction to find a denial of FAPE by SSD under 34 C.F.R. § 300.403(b), in that the parents and the educational agency disagree about FAPE. Petitioners asserted that the regulations cited by the Panel either support their position or were not applicable.

Special School District, on the other hand, asserted that the Panel lacked jurisdiction because due process procedures do not apply to complaints that a school district failed to meet the service requirement for private school children. SSD asserted that the student was unilaterally placed by the parents at Missouri Baptist Children's Home and that Missouri Baptist Children's Home must be considered a private school as defined in 34 C.F.R. § 300.540. As such, SSD asserted that Part B of the IDEA does not apply to the student in this case and concomitantly, the Panel has no jurisdiction to resolve a question of FAPE.

In an Order and Memorandum, the Panel denied the Motion by Special School District and found specifically that it had jurisdiction to decide whether SSD had provided FAPE to the student because the student was placed at Missouri Baptist Children's Home with the approval and referral of the Missouri Division of Family Services (DFS) thereby taking her out of the definition of a private school child. The Panel found that placement at Missouri Baptist Children's Home with the approval of DFS is a question of fact and unanimously found that on the evidence before it that DFS had participated in the placement of the student at Missouri Baptist Children's Home to a level

which excluded Student from the definition of a private school child.

Specifically, the Panel relied upon Respondent's Exhibit 13, wherein Student's mother stated she was referred to Missouri Baptist Children's Home by the Missouri Division of Family Services and the Missouri Department of Mental Health. That same exhibit stated that Missouri Baptist Children's Home intake worker, Debbie Atkins, had spoken with a DFS employee who had called stating she was assisting the parents to find a residential placement.

In Respondent's Exhibit 25 another Missouri Baptist Children's Home employee, Karen Glazebrook, states "Lincoln County DFS is helping them to locate a placement."

Based on this evidence, the Panel found that it had jurisdiction to resolve the issue of FAPE.

#### **IV. Findings of Fact**

The Hearing Panel makes the following Findings of Fact:

1. Student was adopted by her great-aunt and uncle, "Parents", on November 17, 1995. (Ex. R- 1).  
Parents reside in Foley, (Lincoln County), Missouri (09-10-03: Tr. p. 141, line 9-10). Foley,  
Missouri is in the Winfield R-IV School District (09-10-03: Tr. p. 181, line 12-14).
2. Student attended school in the Winfield R-IV School District (Winfield) while living with the  
Parents in Foley, Missouri (09-10-03: Tr., p. 180, line 12-25; p. 181, line 1-8).
3. Winfield School District initially found Student Non-Disabled for special education purposes in  
May, 2000. (Ex. R-3, 01-09-01 Winfield Evaluation).
4. Student was found eligible for special education services on January 9, 2001, by the Winfield  
School District with an educational diagnosis of Other Health Impaired. (Ex. R-3, 01-09-01  
Winfield Evaluation).



5. On February 19, 2001, Parent wrote a letter to the Winfield School to notify the school that Student was being withdrawn from her classes in Winfield Middle School beginning on February 19, 2001, and requested that school records be sent to Heritage Christian Academy (Ex. R-4; 09-10-03: Tr. Parent, p. 180, line 10-18, p. 190, line 5-8).
6. On February 22, 2001, the Winfield School District wrote an IEP which called for 100 minutes per week of services for monitoring homework completion. (Ex. R-5).
7. Student attended school at Heritage Christian Academy – Grade 6, (02-19-01 thru 05-25-01) Heritage Christian Academy – Grade 7, (09-14-01 thru 12-21-01). (Ex R-6).
8. Parent testified that in December, 2001, Student was placed by her parents at the Shiloh Christian Children's Ranch, Kahoka, Missouri. (09-10-03: Tr. Parent, p. 150, line 18-21, p. 151, line 2-3). Student completed two quarters of school at Shiloh Christian Children's Ranch. (Ex. R-7).
9. A psychological evaluation was completed by Jerry Aamoth, (06-26-02) (Ex. R-8). The evaluation indicated that Student came to Shiloh Christian Ranch when Parent developed multiple sclerosis and was unable to manage Student. It was stated that Student had started acting out and that because her father was working 12 hours a day, Student could not be maintained in the home situation. (Ex. R-8).
10. A psychiatric evaluation was completed on September 19, 2002, by Ronald Pike, D.O. of Bridgeway (Burlington, IA office). The diagnostic impression of Dr. Pike was that Student had a diagnosis of Schizoaffective disorder – Bipolar type and Borderline personality

disorder. (Ex. R-9).

11. Student was admitted at the Newman Center, Blessing Hospital in Quincy, Illinois, on October 9, 2002. (Ex. R-12). Dr. Lee Johnson, MD., provided a diagnosis of Probable Schizophrenia (Ex. R-12, p.80). On October 18, 2002, Student was discharged from Blessing Hospital with a diagnosis by Lanny Styles, DO of Schizoaffective disorder with psychotic and manic symptoms. (Ex. R-15, p. 91).
12. Student briefly returned to Shiloh Children's Ranch at Kahoka, Missouri, after she was released from the Newman Center pending her acceptance at Missouri Baptist Children's Home's Crisis Care Unit. (09-10-03: Tr. Parent, p. 202, line 3-7).
13. On October 25, 2002, application was made by Student's parents for her admission at the Missouri Baptist Children's Home facility in Bridgeton (St. Louis County), Missouri. (Ex. R-17).
14. The Division of Family Services referred Student and approved of her placement at Missouri Baptist Children's Home. (Ex. R-13; Ex. R-25 ).
15. There were no financial agreements regarding Student's placement at Missouri Baptist Children's Home involving the State of Missouri for any financial resources from the DFS, DYS, Court, or MACF. (09-25-03: Tr. Marsha Culbreath, p.198, line 3-13).
16. Missouri Baptist Children's Home (MBCH) Children and Family Ministries is under the governing of the Southern Baptist Convention. (09-25-03: Tr. Marsha Culbreath, p. 190, line 11-12).
17. On January 15, 2003, Student moved from the Crisis Care Unit to the Residential facilities at

Missouri Baptist Children's Home. (Ex. R-39; 09-25-03: Tr. Marsha Culbreath, p. 190-191, line 7-23).

18. While attending Pattonville Heights Middle School, Student resides at the Missouri Baptist Children's Home. PHMS is located within the attendance area for students who are in residence at the Missouri Baptist Children's Home. (09-25-03: Tr. Donna Burd, p. 100-101, line 25 and line 1-4; 09-25-03: Tr. Carol Blood, p. 142, line 4-16). Pattonville School District is a partner school district with whom the Special School District of St. Louis County (SSD) works together to provide educational services to students residing at MBCH.
19. Pattonville School District operates an alternative school program in the morning for Student in a location on the Missouri Baptist Children's Home campus. Student's special education services are provided at Pattonville Heights Middle School by the SSD staff while Student attends three (3) regular education classes in the afternoon. (09-25-03: Tr. Carol Blood, p. 141, line 2-19; 09-25-03: Tr. Donette Green, p. 256, line 9-23).
20. The Special School District of St. Louis County (SSD) completed an IEP for Student on February 24, 2003. (Ex. R-44). The IEP provided for an increase in the amount of special education services from the 100 minutes per week as indicated in the February 22, 2002, Winfield School District IEP (Ex. R-5) to 460 minutes per week of special education services in a general education setting to address instruction in task completion / task focus / written expression / math / social interaction (Ex. R-44; 09-25-03: Tr. Monica Garza, p. 64, line 12-23).

21. On or about March 5, 2003, Student ran away from MBCH with another resident and was gone for two days; she ran away briefly immediately after her return. (Ex. R-55; 09-25-03: Tr. Marsha Culbreath, p. 209, line 10-16).
22. On or about March 16, 2003, Student again ran away from MBCH with another resident to Northwest Plaza, but returned on her own (Ex. R-55; 09-25-03: Tr. Marsha Culbreath, p. 209, line 17-23).
23. IEP/Reevaluation meeting was held on May 16, 2003. As a result of that meeting, the IEP Team agreed that additional testing was needed in the areas of social emotional and also requested a psychiatric evaluation to address programming needs and possible modification of her diagnosis. (Ex. R-51; 09-25-03: Tr. Donna Burd, p. 132-133, line 23-25 and line 1- 11).
24. The SSD provided parent with a Notice of Action refusing to change the educational placement to the private facility designated by the parent because Student had made progress on her goals and due to her successes in her placement at the Pattonville School District, the least restrictive environment (LRE). (Ex. R-52). Parent had asked the IEP team to place Student in a residential setting at Chaddock, in Quincy, Illinois at the May IEP meeting. (09-25-03: Tr. Donette Green, pp. 258-259). The IEP team refused to agree to that placement because Student was progressing on her IEP goals, her behavior had improved, and the progress she was making at Pattonville Heights Middle School. The IEP team felt that a more restrictive placement was not needed because Student was making progress. (09-25-03: Tr.

Donette Green, p. 260, line 1-12; Ex. R-52).

25. On May 30, 2003, the SSD's Psychological Examiner (Carol Cross) provided parent with a Notice of Action (Intent to Evaluate) (Ex. R-56).
26. The parent requested a due process hearing on June 3, 2003. (Ex. R-64).
27. Student received passing grades at Pattonville Heights Middle School (Ex. R-58). Student was making progress on every IEP goal and objective. (09-25-03: Tr. Monica Garza, p. 71, line 16-17).
28. Student is currently attending Pattonville Heights Middle School. School staff believe Student can and should be enrolled in more classes at the middle school, in the least restrictive environment.(09-25-03: Tr. Carol Blood, p. 162, line 9-25; 09-25-03: Tr. Michael Winship, p. 19, line 15-24; 09-25-03: Tr. Monica Garza, p. 72, line 1-10; 09-25-03: Tr. Chris Garland, p. 39, line 20-25; 09-25-03: Tr. Donna Burd, p. 118, line 19-23; (09-25-03: Tr. Donette Green, p. 261, line 10-23).
29. Mr. Michael Winship, Student's current 8<sup>th</sup> grade science teacher, testified that Student is doing extremely well overall – socially, emotionally, and academically. (09-25-03: Tr. Michael Winship, p. 19, line 13-14). Student comes to school every day. (09-25-03: Tr. Michael Winship, p.11, line 20-21). The only way that Student stands out in class is in a good way as Student has fewer missing assignments than is typical of an eighth grade student. (09-25-03: Tr. Michael Winship, p. 19, line 2-5). Mr. Winship observes Student at

lunch time meeting people and interacting appropriately. He views Student's interactions as appropriate with peers and adults, that Student is making progress, and is exhibiting appropriate behaviors. (09-25-03: Tr. Michael Winship, p. 18, line 6-22).

30. Mr. Winship would like to see Student spend more time at Pattonville Heights because it has been very good for her. (09-25-03: Tr. Michael Winship, p. 19, line 15-22).
31. The Panel finds the testimony of Mr. Winship credible and gives his testimony significant weight due to his daily interactions and observations of Student in the school environment.
32. Ms. Chris Garland, Student's current 8<sup>th</sup> grade social studies teacher, testified that Student is doing great. (09-25-03: Tr. Chris Garland, p. 35, line 19). Ms. Garland observed Student to interact with other students in Student's class and in the hallway in a manner just like all other kids. (09-25-03: Tr. Chris Garland, p. 38, line 21-25). Student's attendance has been good this semester with Student only missing class one time when she left school early. (09-25-03: Tr. Chris Garland, p. 39, line 16-19).
33. Ms. Garland believes Student could spend more time at Pattonville Heights. (09-25-03: Tr. Chris Garland, p. 39, line 20-25).
34. The Panel finds that Ms. Garland was a credible witness and gives her testimony appropriate weight.
35. Ms. Donna Burd, Assistant Principal at Pattonville Heights Middle School, noted that Student adjusted quite well after some initial difficulties in making the transition to the middle school but the school staff was able to work through these initial difficulties. (09-25-03:

Tr. Donna Burd, p. 115, line 9-13). Ms. Burd noted that the transition to middle school is tough for a lot of students and particularly tough coming in at mid year. (09-25-03: Tr. Donna Burd, p. 117, line 8-16). She sees Student interacting appropriately with peers. (09-25-03: Tr. Donna Burd, p. 116, line 3-20).

36. The Panel finds that Ms. Burd was a credible witness and gives her testimony appropriate weight.
37. Student's attendance for the current school year has been excellent. (09-25-03: Tr. Donna Burd, p. 115, line 18). Ms. Burd sees Student almost every day. It is Ms. Burd's opinion that Student is doing quite well at PHMS this school year. (09-25-03: Tr. Donna Burd, p. 117, line 22-25). On the date of her testimony, Ms. Burd had checked Student's grades in science and social studies. Student had a solid B in both classes, which she described as challenging classes. Student also has received good marks for citizenship, receiving a one and a two. (Ex. R-58; 09-25-03: Tr. Donna Burd, p. 118, line 3-8).
38. Ms. Burd testified that during the period that Student has been at PHMS, Student had one discipline referral. Ms. Burd described the disciplinary referral for the hot glue incident. Student used her finger to wipe glue from a glue gun on the arm of another student. (09-25-03: Tr. Donna Burd, p. 132, line 12-14). Student received three, ninth hour detentions for her actions. (09-25-03: Tr. Donna Burd, p. 127, line 20). Ms. Burd noted it is not unusual for middle school students to act out with material and receive consequences. (09-25-03: Tr. Donna Burd, p. 129, line 7-9). Ms. Burd noted that initially Student lied to her about the glue

incident, but also, that lying is not unusual for middle school students who are in trouble.

Student did admit to the incident and appeared to be remorseful as Student cried. (09-25-03: Tr. Donna Burd, p. 114, line 12-15).

39. Ms. Carol Blood testified that she teaches Student on behalf of PHMS in a classroom at MBCH. (09-25-03: Tr. Carol Blood, p. 143, line 6-13). Ms. Blood believes Student could benefit from spending more time at Pattonville Heights Middle School. (09-25-03: Tr. Carol Blood, p. 162, line 9-21). Ms. Carol Blood believes Student has made huge progress in educational skills and socially since Student came to Pattonville. (09-25-03: Tr. Carol Blood, p. 165, line 10-25).

40. The Panel finds Ms. Blood to be a credible witness and gives her testimony appropriate weight.

41. Parent has multiple sclerosis which has impacted her ability to care for Student. (09-10-03: Tr. Parent, p. 148, line1-9).

42. MBCH indicated that they were ready to discharge Student from their facility. Missouri Baptist provided notice of this recommendation to Student's parents. (09-25-03: Tr. Marsha Culbreath, p. 210, line 5-20). MBCH believes Student is appropriate for a regular home setting and that Student has successfully completed the program (09-25-03: Tr. Marsha Culbreath, p. 211, line19-23).

43. Student continued in the placement at the Missouri Baptist Children's Home, according to Ms. Culbreath, "Because her parents clearly were not ready to receive [Student} in their



home and we wanted to do what was in [Student's] best interest. To keep [Student] in a place where we could continue to provide a nourishing environment.” (09-25-03: Tr. Marsha Culbreath, p. 220, line 21-24). “Home wasn’t an option because [Student’s] parents weren’t willing to take [Student] home, not because we didn’t feel it was an appropriate place to discharge [Student] to.” (09-25-03: Tr. Marsha Culbreath, p. 221, line 9-11).

44. Student was evaluated by Dr. Milton T. Fujita, M.D. on June 3, 2003, and was diagnosed with the DSM-IV of Axis I, Schizoaffective Disorder, Bipolar Type; Reactive Attachment Disorder. Dr. Fujita recommended Student be evaluated for placement at Chaddock. (Ex. R-63).
45. The Panel gives little weight to Dr. Fujita’s report and finds it not relevant to the issue of FAPE because it was not presented to the May 16, 2003, IEP team.
446. Maureen Taylor, Ed.D., testified on behalf of the Petitioners and recommended that Student be placed in a residential setting because of “[Student’s] violence, [Student’s] volatility, erupting very easily into anger, and aggression.” (09-10-03: Tr. Maureen Taylor, p. 46, line 1-4). Ms. Taylor made her recommendation for residential placement without having talked to anyone at the Missouri Baptist Children’s Home, Pattonville School District, Special School District, Dr. Powers, or Dr. Fujita. She only talked to Parents and their attorney. (09-10-03: Tr. Maureen Taylor, p. 72, line 2-24 and p. 73. line 1-7). Maureen Taylor’s recommendations are based on a meeting with Parents on two occasions. (09-10-03: Tr. Maureen Taylor, p. 73, line 8-21).
47. The Panel finds that Ms. Taylor was a credible witness but gives her opinions little weight

given her limited interaction with Student. Furthermore, Ms. Taylor's testimony is not relevant to determining the sufficiency of the May 16, 2003, IEP because her opinion was not presented to the IEP team.

48. On or about June 19, 2003, a psychological evaluation was completed by James R. Powers, Ph.D. in which he diagnosed Student with the DSM-IV of Axis I, Schizoaffective Disorder, Bipolar Type; Reactive Attachment Disorder (Ex. R-67). Dr. Powers recommended that Student receive treatment in a residential setting. (Ex. R-67).
49. The Panel gives little weight to Dr. Powers evaluation. Ms. Donna Burd testified that Dr. Powers did not contact her or to her knowledge any staff at PHMS regarding Student. (09-25-03: Tr. Donna Burd, p. 131, line 11-22). Ms. Carol Blood, Student's teacher at MBCH, testified that Dr. Powers never contacted her. (09-25-03: Tr. Carol Blood, p. 187, line 21-25 and p. 188, line 1-10). Finally, Dr. Powers evaluation was not presented to the IEP team and is not relevant to whether the May 16, 2003, IEP was reasonably calculated to provide Student FAPE.
50. The residential placement of parent's choice, Chaddock in Quincy, Il., is affiliated with the Methodist Church. (09-11-03: Tr. Karen Buckwalter, p. 37, line1-16).
51. Chaddock has applied but is not currently approved by the Missouri Department of Elementary and Secondary Education. (09-11-03: Tr. Jerry Douglas, p.47, line 3-14).

## **V. CONCLUSIONS OF LAW**

The Panel makes the following Conclusion of Law:

52. The Student is a "child with a disability," as that term is defined in the IDEA, its regulations, 34 C.F.R. § 300.7 and the State Plan.

53. SSD is a special school district organized pursuant to Section 162.845 *et seq.* RSMo.
54. The Panel has jurisdiction to resolve the issue of FAPE. SSD urges this Panel to dismiss this action because Student was unilaterally placed by the Parents at MBCH and is therefore considered to be a private school child with disabilities.
55. According to 34 C.F.R. § 300.450, private school children with disabilities are defined as “children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered by §§ 300.400-300.402.”
56. However, under Missouri law, “Children who are admitted to programs or facilities of the department of mental health or whose domicile is one school district in Missouri but who reside in another school district in Missouri as a result of placement arranged by or approved by the department of mental health, the department of social services...shall have a right to be provided the educational services as provided by law....” § 167.126, RSMo.
57. SSD states that it is responsible for the provision of FAPE only if Student was placed at MBCH under the custody of DFS or a court. The Panel disagrees. There is no requirement under the statute that the Student not be in the custody of the parents.
58. Furthermore, SSD’s interpretation of the residency requirement and definition of a private school child with disabilities leads to an untenable conclusion, unnecessarily resulting in a potential denial of FAPE to those children most in need. Those provisions dealing with placement of a student by their parents outside of their home district are aimed at preventing school districts from being subject to what amounts to forum shopping by parents. Such is not the case here. Petitioners placed Student within SSD for treatment of behavior problems at a residential facility, not to elicit specific special education services from SSD.
59. The Panel finds that where, as here, DFS refers a parent to a residential facility and contacts

the facility on the parents behalf seeking admission, the student is “referred” to the facility for the purpose of §167.126, RSMo., and the student is therefore not considered to be a private school child with disabilities and remains eligible for services under Part B of the IDEA.

60. The Panel concludes that because Student was placed at MBCH by referral and with the approval of Missouri Division of Family Services, SSD is required to provide the Student FAPE under § 167.126, RSMo. Therefore, this Panel has jurisdiction to resolve the question of FAPE presented to this Panel by the Petitioner.

61. Because the Panel has jurisdiction to decide this matter, the operative question is whether the IEP of May 16, 2003, was reasonably calculated to provide Student FAPE.

62. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act*, (State Plan) set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as SSD, in providing special education and related services to students with disabilities.

63. The purpose of the IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;” (2) “to ensure that the rights of children with disabilities and their parents are protected;” and, (3) “to assess and ensure the effectiveness of efforts to educate those children.” 34 C.F.R. § 300.1.

64. FAPE, as mandated by the IDEA, is defined at 20 U.S.C. § 1401(8):

The term “free appropriate public education” means special education and related services that -

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

65. The “centerpiece” of the IDEA’s education delivery system is the IEP. *Honig v. Doe*, 484 U.S. 305, 311 (1988).
66. The IEP “sets out the child’s present educational performances, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.” *Id.*
67. The IDEA does not require that the educational program maximize a student’s potential or provide the best education possible. Further, the results need not be superior. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 102 S.Ct. 3034 (1982).
68. The determination of whether an IEP is appropriate and reasonably calculated to confer an educational benefit must be measured from the time the IEP was offered to the student. *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031 (3<sup>rd</sup> Cir. 1993).
69. The Petitioner requests the Panel to find that SSD has not provided her with FAPE because residential placement was required under the authority of *Independent School District No. 284 v. A.C.*, 258 F.3d 769 (8<sup>th</sup> Cir. 2001). There, the court stated, “Despite the statutory preference for mainstream placements, the IDEA recognizes that some disabled students need full-time care in order to receive educational benefit.” The court recognized that residential placement is appropriate where “the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement.” *Id.* at 774.
70. The Panel finds *Independent School District* to be inapplicable in the current case. As noted,

a residential placement must be provided by the state if such a placement is “educationally necessary.” Such is not the case here. There simply is no credible evidence showing that Student’s behavior at school prevents the implementation of her IEP or the provision of FAPE. Put another way, the methods and related services currently in Student’s IEP are reasonably calculated to address all of Student’s disability related needs as evidenced at school.

71. Petitioner relies upon Student’s diagnosis of Reactive Attachment Disorder (RADs), a disorder which can lead to violent and unpredictable behavior, as conclusive that the only appropriate placement for the provision of FAPE is Chaddock
72. The Panel agrees with the Petitioner that Student’s extra-curricular behavior has been challenging at times but finds no credible evidence that SSD has failed to provide FAPE. On the contrary, all of Student’s educators indicated that Student is doing well in school and would benefit from greater inclusion in the regular education setting with her peers.
73. The Panel finds that SSD has met its burden of proving that the May 16, 2003, IEP was reasonably calculated to provide Student with educational benefit as required by *Rowley*,  
102 S.Ct. 3034 (1982). In coming to this conclusion the Panel relies upon the testimony of Student’s teachers, Mr. Michael Winship, Ms. Chris Garland, and Ms. Donna Burd, all of whom indicated that the Student was making progress appropriate to her age. Further, none of Student’s teachers indicated that Student exhibited any non-age related inappropriate behavior at school.
74. In assessing whether educational benefit has occurred, a child’s grades, test scores and advancement from grade to grade are important factors to consider. *Fort Zumwalt School District v. Clynes*, 119 F.3d 607 (8<sup>th</sup> Cir. 1997). The Panel notes that Student in this case

was making passing grades and advanced from seventh to eighth grade during the time in question and finds this fact as support that SSD has provided FAPE.

75. Because the Panel finds that the SSD provided the Student with FAPE, the expert opinions of Dr. Fujita, Dr. Powers, and Dr. Taylor opining that Student should be placed within a residential facility have no weight. These opinions were not provided to the IEP team and were in fact generated after the IEP team made the decision not to place Student at Chaddock.
76. Upon a finding that SSD has provided Student FAPE, the Panel need not address the appropriateness of a residential placement of Student at Chaddock or whether placement at Chaddock would violate Missouri and federal law.

## DECISION

The Panel finds and concludes that SSD has met its burden to show that the May 16, 2003, IEP was reasonably calculated and did in fact provide Student with a free appropriate public education in the least restrictive environment as required by *Rowley*.

Therefore, the Panel finds and concludes that refusal by the IEP team to place Student residentially at Chaddock in Quincy, Illinois, did not deny Student FAPE.

## APPEAL PROCEDURE

PLEASE TAKE NOTICE that this Decision constitutes the final decision of the Department of Elementary and Secondary Education in this matter.

PLEASE TAKE NOTICE that you have a right to request a review of this Decision pursuant to the IDEA and/or Missouri law, §§ 162.962, 536.010 *et seq.* RSMo.

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. § 300.512.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joshua E. Douglass  
Hearing Officer

All Panel Members concur.  
Ms. Sherry Rush, Panel Member  
Dr. Ralph Caraffa, Panel Member



### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was faxed and mailed, postage prepaid, by First Class United States mail, to the attorneys of the parties of record at the address set out below, on this 30<sup>th</sup> day of October, 2003:

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JOSHUA E. DOUGLASS